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In The

Supreme Court of the United States

October Term, 1988

No. 87-2012
FW/PBS, INC., et al.,

Petitioners,

v.

CITY OF DALLAS, et al.,

Respondents.

No. 87-2051
M.J.R., INC., et al.,

Petitioners,

v.

CITY OF DALLAS, et al.,

Respondents.

No. 88-49
CALVIN BERRY, III, et al.,

Petitioners,

v.

CITY OF DALLAS, et al.,

Respondents.

On Writs Of Certiorari To The United States Court Of Appeals To The Fifth Circuit

JOINT APPENDIX

(All Counsel Listed on Inside Cover)

Petition for Certiorari in No. 87-2012 Filed June 8, 1988
Certiorari in No. 87-2012 on Issues I, II and III Granted February 27, 1989
Petition for Certiorari in No. 87-2051 Filed June 13, 1988
Certiorari in No. 87-2051 on Issues I and II Granted February 27, 1989
Petition for Certiorari in No. 88-49 Filed June 13, 1988
Certiorari in No. 88-49 Granted February 27, 1989

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FW/PBS, INC., et al. v. CITY OF DALLAS, et al.

RELEVANT DOCKET ENTRIES

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6/30/86	Plaintiffs', FW/PBS, Inc., et al., Complaint for Declaratory Relief, Temporary Restraining Order, Preliminary Injunction, Permanent Injunction and Attorneys Fees
6/30/86	Plaintiffs', FW/PBS, Inc., et al., Motion for Temporary Restraining Order and/or Preliminary Injunction
7/9/86	Court's Order requiring parties to submit affidavits and/or depositions in determining Plaintiffs', FW/PBS, Inc., et al., request for preliminary injunction
7/15/86	Plaintiffs', M.J.R., Inc., et al., Original Complaint, Complaint for Declaratory Judgment, Complaint for Temporary Restraining Order, Complaint for Temporary Injunction, Complaint for Preliminary Injunction and Complaint for Permanent Injunction
7/15/86	Plaintiffs', M.J.R., Inc., et al., Motion for Temporary Restraining Order and Brief in support thereof
7/15/86	Plaintiffs', M.J.R., Inc., et al., Application for Preliminary Injunction
7/17/86	Plaintiffs', Calvin Berry, III, et al., Complaint for Declaratory Relief, Temporary Restraining Order, Preliminary Injunction and Permanent Injunction
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7/31/86	Defendants' Motion for Summary Judgment and Supporting Brief
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8/6/86	Court's Order confirming accelerated schedule
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8/13/86	Plaintiffs', FW/PBS, Inc., et al., Cross-Motion for Summary Judgment and Supporting Brief
8/15/86	Plaintiffs', M.J.R., Inc., et al., Brief in Support of Motion for Summary Judgment
8/15/86	Plaintiffs', Calvin Berry, III, et al., Motion for Summary Judgment and Supporting Brief
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7/12/88	Respondents' Brief in Opposition to Petitioners' Petitions for Writ of Certiorari
8/10/88	Petitioners', FW/PBS, Inc., et al., Reply Brief in Support of Petition for Writ of Certiorari
2/27/89	Petitioners', FW/PBS, Inc., et al., Petition for Writ of Certiorari is granted as to Questions I, II and III of Petition; Petitioners', M.J.R., Inc., et al., Petition for Writ of Certiorari is granted as to Questions 1 and 2; and Petitioners', Calvin Berry, III, et al., Petition for Writ of Certiorari is granted.

UNITED STATES DISTRICT COURT

Case No. CA3-86-1759-R

Order of Judgment and Memorandum Opinion, *FW/PBS Inc., et al. v. City of Dallas, et al.* (Printed as Appendix F to the Petition for Certiorari in Case No. 87-2012, pp. 39-70)

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Case No. 86-1723

Opinion, *FW/PBS, Inc. et al. v. City of Dallas, et al.*, (Printed as Appendix A to the Petition for Certiorari in Case No. 87-2012, pp. 1-30)

Denial of Petition for Rehearing and Suggestion for Rehearing En Banc (Printed as Appendix B to the Petition for Certiorari in Case No. 87-2012, pp. 31-32)

Denial of Petitioner's Motion for Stay of the Issuance of the Mandate pending filing of Petition for Writ of Certiorari (Printed as Appendix C to the Petition for Certiorari in Case No. 87-2012, pp. 33-36)

SUPREME COURT OF THE UNITED STATES

FW/PBS, Inc., dba Paris Adult Bookstore II, et al.,
v. City of Dallas, et al.
No. 87-2012
M.J.R., Inc., et al.,
v. City of Dallas
No. 87-2051
Calvin Berry, III, et al.,
v. City of Dallas, et al.
No. 88-49

February 27, 1989

The motion of Citizens For Decency Through Law, Inc. for leave to file a brief as amicus curiae in No. 87-2012 is granted. The petition for a writ of certiorari in No. 87-2012 is granted limited to Questions I, II and III presented by the petition. The petition for a writ of certiorari in No. 87-2051 is granted limited to Questions 1 and 2 presented by the petition. The petition for a writ of certiorari in No. 88-49 is granted. The cases are consolidated and a total of one hour is allotted for oral argument.

CHAPTER 41A. SEXUALLY ORIENTED BUSINESSES

SEC. 41A-1. Purpose and intent.
SEC. 41A-2. Definitions.
SEC. 41A-3. Classifications.
SEC. 41A-4. License required.
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SEC. 41A-12. Transfer of license.
SEC. 41A-13. Location of sexually oriented businesses.
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SEC. 41A-19. Regulations pertaining to exhibition of sexually explicit films or videos.
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SEC. 41A-22. Injunction.
SEC. 41A-23. Amendment of this chapter.

CHAPTER 41A. SEXUALLY ORIENTED BUSINESSES

CHAPTER 41A-1. PURPOSE AND INTENT.

(a) It is the purpose of this chapter to regulate sexually oriented businesses to promote the health,

safety, morals, and general welfare of the citizens of the city, and to establish reasonable and uniform regulations to prevent the continued concentration of sexually oriented businesses within the city. The provisions of this chapter have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent nor effect of this chapter to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market.

(b) It is the intent of the city council that the locational regulations of Section 41A-13 of this chapter are promulgated pursuant to Article 2372w, Revised Civil Statutes of Texas, as they apply to nude model studios and sexual encounter centers only. It is the intent of the city council that all other provisions of this chapter are promulgated pursuant to the Dallas City Charter and Article 1175, Revised Civil Statutes of Texas. (Ord. 19196)

SEC. 41A-2. DEFINITIONS.

In this chapter:

(1) ADULT ARCADE means any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by the depicting or describing

of "specified sexual activities" or "specified anatomical areas."

(2) ADULT BOOKSTORE or ADULT VIDEO STORE means a commercial establishment which as one of its principal business purposes offers for sale or rental for any form of consideration any one or more of the following:

(A) books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, slides, or other visual representations which depict or describe "specified sexual activities" or "specified anatomical areas"; or

(B) instruments, devices, or paraphernalia which are designed for use in connection with "specified sexual activities."

(3) ADULT CABARET means a nightclub, bar, restaurant, or similar commercial establishment which regularly features:

(A) persons who appear in a state of nudity; or

(B) live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities"; or

(C) films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description or "specified sexual activities" or "specified anatomical areas."

(4) ADULT MOTEL means a hotel, motel or similar commercial establishment which:

(A) offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas"; and has a sign visible from the public right of way which advertises the availability of this adult type of photographic reproductions; or

(B) offers a sleeping room for rent for a period of time that is less than 10 hours; or

(C) allows a tenant or occupant of a sleeping room to subrent the room for a period of time that is less than 10 hours.

(5) ADULT MOTION PICTURE THEATER means a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are regularly shown which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."

(6) ADULT THEATER means a theater, concert hall, auditorium, or similar commercial establishment which regularly features persons who appear in a state of nudity or live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities."

(7) CHIEF OF POLICE means the chief of police of the city of Dallas or his designated agent.

(8) ESCORT means a person who, for consideration, agrees or offers to act as a companion, guide, or date of another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.

(9) ESCORT AGENCY means a person or business association who furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes, for a fee, tip, or other consideration.

(10) ESTABLISHMENT means and includes any of the following:

(A) the opening or commencement of any sexually oriented business as a new business;

(B) the conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business;

(C) the addition of any sexually oriented business to any other existing sexually oriented business; or

(D) the relocation of any sexually oriented business.

(11) LICENSEE means a person in whose name a license to operate a sexually oriented business has been issued, as well as the individual listed as an applicant on the application for a license.

(12) NUDE MODEL STUDIO means any place where a person who appears in a state of nudity or displays "specified anatomical areas" is provided to be

observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration.

(13) NUDITY or a STATE OF NUDITY means:

(A) the appearance of a human bare buttock, anus, male genitals, female genitals, or female breast; or

(B) a state of dress which fails to opaquely cover a human buttock, anus, male genitals, female genitals, or areola of the female breast.

(14) PERSON means an individual, proprietorship, partnership, corporation, association, or other legal entity.

(15) RESIDENTIAL DISTRICT means a single family, duplex, townhouse, multiple family or mobile home zoning district as defined in the Dallas Development Code.

(16) RESIDENTIAL USE means a single family, duplex, multiple family, or "mobile home park, mobile home subdivision, and campground" use as defined in the Dallas Development Code.

(17) SEMI-NUDE means a state of dress in which clothing covers no more than the genitals, pubic region, and areolae of the female breast, as well as portions of the body covered by supporting straps or devices.

(18) SEXUAL ENCOUNTER CENTER means a business or commercial enterprise that, as one of its primary business purposes, offers for any form of consideration:

(A) physical contact in the form of wrestling or tumbling between persons of the opposite sex; or

(B) activities between male and female persons and/or persons of the same sex when one or more of the persons is in a state of nudity or semi-nude.

(19) SEXUALLY ORIENTED BUSINESS means an adult arcade, adult bookstore or adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude model studio, or sexual encounter center.

(20) SPECIFIED ANATOMICAL AREAS means human genitals in a state of sexual arousal.

(21) SPECIFIED SEXUAL ACTIVITIES means and includes any of the following:

(A) the fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts;

(B) sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy;

(C) masturbation, actual or simulated; or

(D) excretory functions as part of or in connection with any of the activities set forth in (A) through (C) above.

(22) SUBSTANTIAL ENLARGEMENT of a sexually oriented business means the increase in floor area occupied by the business by more than 25 percent, as the floor area exists on June 18, 1986.

(23) TRANSFER OF OWNERSHIP OR CONTROL of a sexually oriented business means and includes any of the following:

(A) the sale, lease, or sublease of the business;

(B) the transfer of securities which constitute a controlling interest in the business, whether by sale, exchange, or similar means; or

(C) the establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control. (Ord. Nos. 19196; 19377)

SEC. 41A-3. CLASSIFICATION.

Sexually oriented businesses are classified as follows:

(1) adult arcades;

(2) adult bookstores or adult video stores;

(3) adult cabarets;

(4) adult motels;

(5) adult motion picture theaters;

(6) adult theaters;

(7) escort agencies;

(8) nude model studios; and

(9) sexual encounter centers. (Ord. 19196)

SEC. 41A-4. LICENSE REQUIRED.

(a) A person commits an offense if he operates a sexually oriented business without a valid license, issued by the city for the particular type of business.

(b) An application for a license must be made on a form provided by the chief of police. The application must be accompanied by a sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared but must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches. Applicants who must comply with Section 41A-19 of this chapter shall submit a diagram meeting the requirements of Section 41A-19.

(c) The applicant must be qualified according to the provisions of this chapter and the premises must be inspected and found to be in compliance with the law by the health department, fire department, and building official.

(d) If a person who wishes to operate a sexually oriented business is an individual, he must sign the application for a license as applicant. If a person who wishes to operate a sexually oriented business is other than an individual, each individual who has a 20 percent or greater interest in the business must sign the application for a license as applicant. Each applicant must be qualified under Section 41A-5 and each applicant shall be considered a licensee if a license is granted.

(e) The fact that a person possesses a valid theater license, dance hall license, or public house of amusement license does not exempt him from the requirement of obtaining a sexually oriented business license. A person who operates a sexually oriented business and possesses a theater license, public house of amusement license or dance hall license shall comply with the requirements and provisions of this chapter as well as the requirements and provisions of Chapter 46 and Chapter 14 of this code when applicable. (Ord. 19196)

SEC. 41A-5. ISSUANCE OF LICENSE.

(a) The chief of police shall approve the issuance of a license by the assessor and collector of taxes to an applicant within 30 days after receipt of an application unless he finds one or more of the following to be true:

(1) An applicant is under 18 years of age.

(2) An applicant or an applicant's spouse is overdue in his payment to the city of taxes, fees, fines, or penalties assessed against him or imposed upon him in relation to a sexually oriented business.

(3) An applicant has failed to provide information reasonably necessary for issuance of the license or has falsely answered a question or request for information on the application form.

(4) An applicant or an applicant's spouse has been convicted of a violation of a provision of this chapter, other than the offense of operating a sexually oriented business without a license, within two years

immediately preceding the application. The fact that a conviction is being appealed shall have no effect.

(5) An applicant is residing with a person who has been denied a license by the city to operate a sexually oriented business within the preceding 12 months, or residing with a person whose license to operate a sexually oriented business has been revoked within the preceding 12 months.

(6) The premises to be used for the sexually oriented business have not been approved by the health department, fire department, and the building official as being in compliance with applicable laws and ordinances.

(7) The license fee required by this chapter has not been paid.

(8) An applicant has been employed in a sexually oriented business in a managerial capacity within the preceding 12 months and has demonstrated that he is unable to operate or manage a sexually oriented business premises in a peaceful and law-abiding manner, thus necessitating action by law enforcement officers.

(9) An applicant or the proposed establishment is in violation of or is not in compliance with Section 41A-7, 41A-12, 41A-13, 41A-15, 41A-16, 41A-17, 41A-18, 41A-19 or 41A-20.

(10) An applicant or an applicant's spouse has been convicted of a crime:

(A) involving:

(i) any of the following offenses as described in Chapter 43 of the Texas Penal Code:

(aa) prostitution;

(bb) promotion of prostitution;

(cc) aggravated promotion of prostitution;

(dd) compelling prostitution;

(ee) obscenity;

(ff) sale, distribution, or display of harmful material to minor;

(gg) sexual performance by a child;

(hh) possession of child pornography;

(ii) any of the following offenses as described in Chapter 21 of the Texas Penal Code:

(aa) public lewdness;

(bb) indecent exposure;

(cc) indecency with a child;

(iii) sexual assault or aggravated sexual assault as described in Chapter 22 of the Texas Penal Code;

(iv) incest, solicitation of a child, or harboring a runaway child as described in Chapter 25 of the Texas Penal Code; or

(v) criminal attempt, conspiracy, or solicitation to commit any of the foregoing offenses;

(B) for which:

(i) less than two years have elapsed since the date of conviction or the date of release from confinement

imposed for the conviction, whichever is the later date, if the conviction is of a misdemeanor offense;

(ii) less than five years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date, if the conviction is of a felony offense; or

(iii) less than five years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date, if the convictions are of two or more misdemeanor offenses or combination of misdemeanor offenses occurring within any 24-month period.

(b) The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant or applicant's spouse.

(c) An applicant who has been convicted or whose spouse has been convicted of an offense listed in Subsection (a)(10) may qualify for a sexually oriented business license only when the time period required by Section 41A-5(a)(10)(B) has elapsed.

(d) The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the expiration date, and the address of the sexually oriented business. The license shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it may be easily read at any time. (Ord. Nos. 19196; 19377)

SEC. 41A-6. FEES.

(a) The annual fee for a sexually oriented business license is $500.

(b) If an applicant is required by this code to also obtain a dance hall license or public house of amusement license for the business at a single location, payment of the fee for the sexually oriented business license exempts the applicant from payment of the fees for the dance hall or public house of amusement licenses. (Ord. 19196)

SEC. 41A-7. INSPECTION.

(a) An applicant or licensee shall permit representatives of the police department, health department, fire department, housing and neighborhood services department, and building inspection division to inspect the premises of a sexually oriented business for the purpose of insuring compliance with the law, at any time it is occupied or open for business.

(b) A person who operates a sexually oriented business or his agent or employee commits an offense if he refuses to permit a lawful inspection of the premises by a representative of the police department at any time it is occupied or open for business.

(c) The provisions of this section do not apply to areas of an adult motel which are currently being rented by a customer for use as a permanent or temporary habitation. (Ord. Nos. 19196; 19377)

SEC. 41A-8. EXPIRATION OF LICENSE.

(a) Each license shall expire one year from the date of issuance and may be renewed only by making application as provided in Section 41A-4. Application for renewal should be made at least 30 days before the expiration date, and when made less than 30 days before the expiration date, the expiration of the license will not be affected.

(b) When the chief of police denies renewal of a license, the applicant shall not be issued a license for one year from the date of denial. If, subsequent to denial, the chief of police finds that the basis for denial of the renewal license has been corrected or abated, the applicant may be granted a license if at least 90 days have elapsed since the date denial became final. (Ord. 19196)

SEC. 41A-9. SUSPENSION.

The chief of police shall suspend a license for a period not to exceed 30 days if he determines that a licensee or an employee of a licensee has:

(1) violated or is not in compliance with Section 41A-7, 41A-12, 41A-13, 41A-15, 41A-16, 41A-17, 41A-18, 41A-19, or 41A-20 of this chapter;

(2) engaged in excessive use of alcoholic beverages while on the sexually oriented business premises;

(3) refused to allow an inspection of the sexually oriented business premises as authorized by this chapter;

(4) knowingly permitted gambling by any person on the sexually oriented business premises;

(5) demonstrated inability to operate or manage a sexually oriented business in a peaceful and law-abiding manner thus necessitating action by law enforcement officers. (Ord. 19196)

SEC. 41A-10. REVOCATION.

(a) The chief of police shall revoke a license if a cause of suspension in Section 41A-9 occurs and the license has been suspended within the preceding 12 months.

(b) The chief of police shall revoke a license if he determines that:

(1) a licensee gave false or misleading information in the material submitted to the chief of police during the application process;

(2) a licensee or an employee has knowingly allowed possession, use, or sale of controlled substances on the premises;

(3) a licensee or an employee has knowingly allowed prostitution on the premises;

(4) a licensee or an employee knowingly operated the sexually oriented business during a period of time when the licensee's license was suspended;

(5) a licensee has been convicted of an offense listed in Section 41A-5(a)(10)(A) for which the time period required in Section 41A-5(a)(10)(B) has not elapsed;

(6) on two or more occasions within a 12-month period, a person or persons committed an offense occurring in or on the licensed premises of a crime listed in Section 41A-5(a)(10)(A), for which a conviction has been obtained, and the person or persons were employees of the sexually oriented business at the time the offenses were committed;

(7) a licensee or an employee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation or sexual contact to occur in or on the licensed premises. The term "sexual contact" shall have the same meaning as it is defined in Section 21.01, Texas Penal Code; or

(8) a licensee is delinquent in payment to the city for hotel occupancy taxes, ad valorem taxes, or sales taxes related to the sexually oriented business.

(c) The fact that a conviction is being appealed shall have no effect on the revocation of the license.

(d) Subsection (b)(7) does not apply to adult motels as a ground for revoking the license unless the licensee or employee knowingly allowed the act of sexual intercourse, sodomy, oral copulation, masturbation, or sexual contact to occur in a public place or within public view.

(e) When the chief of police revokes a license, the revocation shall continue for one year and the licensee shall not be issued a sexually oriented business license for one year from the date revocation became effective. If, subsequent to revocation, the chief of police finds that the basis for the revocation has been corrected or abated, the applicant may be granted a license if at least 90 days have

elapsed since the date the revocation became effective. If the license was revoked under Subsection (b)(5), an applicant may not be granted another license until the appropriate number of years required under Section 41A-5(a)(10)(B) has elapsed. (Ord. Nos. 19196; 19377)

SEC. 41A-11. APPEAL.

If the chief of police denies the issuance of a license, or suspends or revokes a license, he shall send to the applicant, or licensee, by certified mail, return receipt requested, written notice of his action and the right to an appeal. The aggrieved party may appeal the decision of the chief of police to a permit and license appeal board in accordance with Section 2-96 of this code. The filing of an appeal stays the action of the chief of police in suspending or revoking a license until the permit and license appeal board makes a final decision. If within a 10 day period the chief of police suspends, revokes, or denies issuance of a dance hall license or public house of amusement license for the same location involved in the chief's actions on the sexually oriented business license, then the chief may consolidate the requests for appeals of those actions into one appeal. (Ord. 19196)

SEC. 41A-12. TRANSFER OF LICENSE.

A licensee shall not transfer this license to another, nor shall a licensee operate a sexually oriented business under the authority of a license at any place other than the address designated in the application. (Ord. 19196)

SEC. 41A-13. LOCATION OF SEXUALLY ORIENTED BUSINESSES.

(a) A person commits an offense if he operates or causes to be operated a sexually oriented business within 1,000 feet of:

(1) a church;

(2) a public or private elementary or secondary school;

(3) a boundary of a residential district as defined in this chapter;

(4) a public park adjacent to a residential district as defined in this chapter; or

(5) the property line of a lot devoted to a residential use as defined in this chapter.

(b) A person commits an offense if he causes or permits the operation, establishment, substantial enlargement, or transfer of ownership or control of a sexually oriented business within 1,000 feet of another sexually oriented business.

(c) A person commits an offense if he causes or permits the operation, establishment, or maintenance of more than one sexually oriented business in the same building, structure, or portion thereof, or the increase of floor area of any sexually oriented business in any building, structure, or portion thereof containing another sexually oriented business.

(d) For the purposes of Subsection (a), measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion

of the building or structure used as a part of the premises where a sexually oriented business is conducted, to the nearest property line of the premises of a church or public or private elementary or secondary school, or to the nearest boundary of an affected public park, residential district, or residential lot.

(e) For purposes of Subsection (b) of this section, the distance between any two sexually oriented businesses shall be measured in a straight line, without regard to intervening structures or objects, from the closest exterior wall of the structure in which each business is located.

(f) Any sexually oriented business lawfully operating on June 18, 1986, that is in violation of Subsections (a), (b), or (c) of this section shall be deemed a nonconforming use. The nonconforming use will be permitted to continue for a period not to exceed three years, unless sooner terminated for any reason or voluntarily discontinued for a period of 30 days or more. Such nonconforming uses shall not be increased, enlarged, extended or altered except that the use may be changed to a conforming use. If two or more sexually oriented businesses are within 1,000 feet of one another and otherwise in a permissible location, the sexually oriented business which was first established and continually operating at a particular location is the conforming use and the later-established business(es) is nonconforming.

(g) A sexually oriented business lawfully operating as a conforming use is not rendered a nonconforming use by the location, subsequent to the grant or renewal of the sexually oriented business license, of a church, public or

private elementary or secondary school, public park, residential district, or residential lot within 1,000 feet of the sexually oriented business. This provision applies only to the renewal of a valid license, and does not apply when an application for a license is submitted after a license has expired or has been revoked. (Ord. Nos. 19196; 19377)

SEC. 41A-14. EXEMPTION FROM LOCATION RESTRICTIONS.

(a) If the chief of police denies the issuance of a license to an applicant because the location of the sexually oriented business establishment is in violation of Section 41A-13 of this chapter, then the applicant may, not later than 10 calendar days after receiving notice of the denial, file with the city secretary a written request for an exemption from the locational restrictions of Section 41A-13.

(b) If the written request is filed with the city secretary within the 10-day limit, a permit and license appeal board, selected in accordance with Section 2-95 of this code, shall consider the request. The city secretary shall set a date for the hearing within 60 days from the date the written request is received.

(c) A hearing by the board may proceed if at least two of the board members are present. The board shall hear and consider evidence offered by any interested person. The formal rules of evidence do not apply.

(d) The permit and license appeal board may, in its discretion, grant an exemption from the locational restrictions of Section 41A-13 if it makes the following findings:

(1) that the location of the proposed sexually oriented business will not have a detrimental effect on nearby properties or be contrary to the public safety or welfare;

(2) that the granting of the exemption will not violate the spirit and intent of this chapter of the city code;

(3) that the location of the proposed sexually oriented business will not downgrade the property values or quality of life in the adjacent areas or encourage the development of urban blight;

(4) that the location of an additional sexually oriented business in the area will not be contrary to any program of neighborhood conservation nor will it interfere with any efforts of urban renewal or restoration; and

(5) that all other applicable provisions of this chapter will be observed.

(e) The board shall grant or deny the exemption by a majority vote. Failure to reach a majority vote shall result in denial of the exemption. Disputes of fact shall be decided on the basis of a preponderance of the evidence. The decision of the permit and license appeal board is final.

(f) If the board grants the exemption, the exemption is valid for one year from the date of the board's action. Upon the expiration of an exemption, the sexually oriented business is in violation of the locational restrictions of Section 41A-13 until the applicant applies for and receives another exemption.

(g) If the board denies the exemption, the applicant may not re-apply for an exemption until at least 12 months have elapsed since the date of the board's action.

(h) The grant of an exemption does not exempt the applicant from any other provisions of this chapter other than the locational restrictions of Section 41A-13. (Ord. 19196)

SEC. 41A-15. ADDITIONAL REGULATIONS FOR ESCORT AGENCIES.

(a) An escort agency shall not employ any person under the age of 18 years.

(b) A person commits an offense if he acts as an escort or agrees to act as an escort for any person under the age of 18 years. (Ord. 19196)

SEC. 41A-16. ADDITIONAL REGULATIONS FOR NUDE MODEL STUDIOS.

(a) A nude model studio shall not employ any person under the age of 18 years.

(b) A person under the age of 18 years commits an offense if he appears in a state of nudity in or on the premises of a nude model studio. It is a defense to prosecution under this subsection if the person under 18 years was in a restroom not open to public view or persons of the opposite sex.

(c) A person commits an offense if he appears in a state of nudity or knowingly allows another to appear in a state of nudity in an area of a nude model studio

premises which can be viewed from the public right of way.

(d) A nude model studio shall not place or permit a bed, sofa, or mattress in any room on the premises, except that a sofa may be placed in a reception room open to the public. (Ord. 19196)

SEC. 41A-17. ADDITIONAL REGULATIONS FOR ADULT THEATERS AND ADULT MOTION PICTURE THEATERS.

(a) The requirements and provisions of Chapter 46 of this code remain applicable to adult theaters and adult motion picture theaters.

(b) A person commits an offense if he knowingly allows a person under the age of 18 years to appear in a state of nudity in or on the premises of an adult theater or adult motion picture theater.

(c) A person under the age of 18 years commits an offense if he knowingly appears in a state of nudity in or on the premises of an adult theater or adult motion picture theater.

(d) It is a defense to prosecution under Subsections (b) and (c) of this section if the person under 18 years was in a restroom not open to public view or persons of the opposite sex. (Ord. 19196)

SEC. 41A-18. ADDITIONAL REGULATIONS FOR ADULT MOTELS.

(a) Evidence that a sleeping room in a hotel, motel, or similar commercial establishment has been rented and

vacated two or more times in a period of time that is less than 10 hours creates a rebuttable presumption that the establishment is an adult motel as that term is defined in this chapter.

(b) A person commits an offense if, as the person in control of a sleeping room in a hotel, motel, or similar commercial establishment that does not have a sexually oriented business license, he rents or subrents a sleeping room to a person and, within 10 hours from the time the room is rented, he rents or subrents the same sleeping room again.

(c) For purposes of Subsection (b) of this section, the terms "rent" or "subrent" mean the act of permitting a room to be occupied for any form of consideration. (Ord. 19196)

SEC. 41A-19. REGULATIONS PERTAINING TO EXHIBITION OF SEXUALLY EXPLICIT FILMS OR VIDEOS.

(a) A person who operates or causes to be operated a sexually oriented business, other than an adult motel, which exhibits on the premises in a viewing room of less than 150 square feet of floor space, a film, video cassette, or other video reproduction which depicts specified sexual activities or specified anatomical areas, shall comply with the following requirements:

(1) Upon application for a sexually oriented business license, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one or more manager's stations and

the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A manager's station may not exceed 32 square feet of floor area. The diagram shall also designate the place at which the permit will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six inches. The chief of police may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.

(2) The application shall be sworn to be true and correct by the applicant.

(3) No alteration in the configuration or location of a managers's station may be made without the prior approval of the chief of police or his designee.

(4) It is the duty of the owners and operator of the premises to ensure that at least one employee is on duty and situated in each manager's station at all times that any patron is present inside the premises.

(5) The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manger's station of every area of the premises to which any patron is permitted access for any purpose

excluding restrooms. Restrooms may not contain video reproduction equipment. If the premises has two or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one of the manager's stations. The view required in this subsection must be by direct line of sight from the manager's station.

(6) It shall be the duty of the owners and operator, and it shall also be the duty of any agents and employees present in the premises to ensure that the view area specified in Subsection (5) remains unobstructed by any doors, walls, merchandise, display racks or other materials at all times that any patron is present in the premises and to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted in the application filed pursuant to Subsection (1) of this section.

(7) The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than one (1.0) footcandle as measured at the floor level.

(8) It shall be the duty of the owners and operator and it shall also be the duty of any agents and employees present in the premises to ensure that the illumination described above, is maintained at all times that any patron is present in the premises.

(b) A person having a duty under Subsections (1) through (8) of subsection (a) above commits an offense if he knowingly fails to fulfill that duty. (Ord. 19196)

SEC. 41A-20. DISPLAY OF SEXUALLY EXPLICIT MATERIAL TO MINORS.

(a) A person commits an offense if, in a business establishment open to persons under the age of 17 years, he displays a book, pamphlet, newspaper, magazine, film, or video cassette, the cover of which depicts, in a manner calculated to arouse sexual lust or passion for commercial gain or to exploit sexual lust or perversion for commercial gain, any of the following:

(1) human sexual intercourse, masturbation, or sodomy;

(2) fondling or other erotic touching of human genitals, pubic region, buttocks, or female breasts;

(3) less than completely and opaquely covered human genitals, buttocks, or that portion of the female breast below the top of the areola; or

(4) human male genitals in a discernibly turgid state, whether covered or uncovered.

(b) In this section "display" means to locate an item in such a manner that, without obtaining assistance from an employee of the business establishment:

(1) it is available to the general public for handling and inspection; or

(2) the cover or outside packaging on the item is visible to members of the general public. (Ord. 19196)

SEC. 41A-21. ENFORCEMENT.

(a) Except as provided by Subsection (b), any person violating Section 41A-13 of this chapter, upon conviction, is punishable by a fine not to exceed $2,000.

(b) If the sexually oriented business involved is a nude model studio or sexual encounter center, then violation of Section 41A-4(a) or 41A-13 of this chapter is punishable as a Class B misdemeanor.

(c) Except as provided by Subsection (b), any person violating a provision of this chapter other than Section 41A-13, upon conviction, is punishable by a fine not to exceed $500.

(d) It is a defense to prosecution under Section 41A-4(a), 41A-13, or 41A-16(d) that a person appearing in a state of nudity did so in a modeling class operated:

(1) by a proprietary school licensed by the state of Texas; a college, junior college, or university supported entirely or partly by taxation;

(2) by a private college or university which maintains and operates educational programs in which credits are transferrable to a college, junior college, or university supported entirely or partly by taxation; or

(3) in a structure:

(A) which has no sign visible from the exterior of the structure and no other advertising that indicates a nude person is available for viewing; and

(B) where in order to participate in a class a student must enroll at least three days in advance of the class; and

(C) where no more than one nude model is on the premises at any one time.

(e) It is a defense to prosecution under Section 41A-4(a) or Section 41A-13 that each item of descriptive, printed, film, or video material offered for sale or rental, taken as a whole, contains serious literary, artistic, political, or scientific value. (Ord. Nos. 19196; 19963)

SEC. 41A-22. INJUNCTION.

A person who operates or causes to be operated a sexually oriented business without a valid license or in violation of Section 41A-13 of this chapter is subject to a suit for injunction as well as prosecution for criminal violations. (Ord. 19196)

SEC. 41A-23. AMENDMENT OF THIS CHAPTER.

Sections 41A-13 and 41A-14 of this chapter may be amended only after compliance with the procedure required to amend a zoning ordinance. Other sections of this chapter may be amended by vote of the city council. (Ord. 19196)

ARTICLE IX. PERMIT AND LICENSE APPEAL BOARD

SEC. 2-95. PERMIT AND LICENSE APPEAL BOARD – CREATED; FUNCTION; TERMS; HEARING PANELS.

(a) There is hereby created the permit and license appeal board of the city, which shall be composed of 12 members appointed by the city council.

(b) The permit and license appeal board shall hear appeals filed in accordance with Section 2-96 of this chapter.

(c) All members shall be appointed for a term to expire on September 1, 1985. Subsequent appointments shall be made in August of odd-numbered years for a two year term beginning on September 1. All members shall serve until their successors are appointed and qualified.

(d) The city secretary shall divide the board into four hearing panels for the purpose of performing the duties of the board. The city secretary shall assign cases to the hearing panels on a rotating basis. Each hearing panel has the same authority as the full board. A decision by a hearing panel constitutes a decision by the board. (Ord. 18200)

SEC. 2-96. APPEALS FROM ACTIONS OF DEPARTMENT DIRECTORS.

(a) If the director of a city department denies, suspends, or revokes a license or permit over which he has regulatory authority, and no appeal is provided by ordinance to another city board, the action is final unless the applicant, licensee, or permittee files a written appeal to

the permit and license appeal board with the city secretary within 10 calendar days after the date of receiving notice of the director's action.

(b) If a written request for an appeal hearing is filed with the city secretary within the 10 day limit, a permit and license appeal board, selected in accordance with Section 2-95 of this chapter, shall hear the appeal. The city secretary shall set a date for the hearing within 60 days from the date of the appeal. The permit and license appeal board shall hear and consider evidence offered by any interested person. The formal rules of evidence do not apply.

(c) The permit and license appeal board shall decide the appeal on the basis of a preponderance of the evidence presented at the hearing if there is a dispute of fact, otherwise the board shall decide the appeal in accordance with the provisions of this code. The board shall affirm, reverse, or modify the action of the director by a majority vote. Failure to reach a majority decision on a motion shall leave the director's decision unchanged. A hearing of a permit and license appeal board may proceed if at least two of the board members are present. The decision of the permit and license appeal board is final. (Ord. 18200)

Sec. 2-97.-2-100. RESERVED

DALLAS DEVELOPMENT CODE

ARTICLE I

TITLE, PURPOSE, ENFORCEMENT, CERTIFICATE OF OCCUPANCY, FEES, NOTIFICATION SIGNS

SEC. 51-1.101. TITLE.

This chapter is known as the Dallas Development Code.

SEC. 51-1.102. PURPOSE.

The regulations in this chapter have been established in accordance with a comprehensive plan for the purpose of promoting the health, safety, morals, and general welfare of the city in order to:

(1) lessen the congestion in the streets;

(2) secure safety from fire, flooding, and other dangers;

(3) provide adequate light and air;

(4) prevent the overcrowding of land;

(5) avoid undue concentration of population;

(6) facilitate the adequate provision of transportation, water, sewage, schools, parks, and other public requirements;

(7) promote the character of areas of the city;

(8) limit the uses in areas of the city that are peculiarly suitable for particular uses;

(9) conserve the value of buildings; and

(10) encourage the most appropriate use of land throughout the city.

SEC. 51-1.103. ENFORCEMENT.

(a) *Criminal prosecution.*

(1) A person who violates any provision of this chapter is guilty of a separate offense for each day or portion of a day during which the violation is continued. Each offense is punishable by a fine not to exceed $1,000.

(2) A person is criminally responsible for a violation of this chapter if:

(A) the person commits the violation or assists in the commission of the violation; or

(B) the person owns part or all of the land or a structure on the land where the violation exists.

(3) A person may not use land or a structure on land located in the city for other than those uses designated as permitted uses in accordance with the provisions of this chapter.

(4) It is a defense to prosecution under this chapter that a person is in compliance with an order of the board of adjustment that specifically authorizes otherwise unlawful conduct.

(b) *Civil action.* This chapter may be enforced through civil court action as provided by state law.

(c) *Utility disconnection.* The building official may order city or private utilities to be disconnected upon failure to comply with this chapter or the building laws.

(d) *Enforcement authority.* This chapter may be enforced by the building official or any other representative of the city. (Ord. 18001)

SEC. 51-1.104. CERTIFICATE OF OCCUPANCY.

(a) *Certificate of occupancy required.*

(1) Except for the single-family and duplex uses, a person shall not use or change the use of a building, a portion of a building, or land without obtaining a certificate of occupancy from the building official.

(2) A person shall submit an application for a certificate of occupancy on a form approved by the building official either:

(A) at the time of application for a building permit if there is new construction; or

(B) before occupancy and connection of utilities if there is a change of use.

(3) The building official shall not issue a certificate of occupancy until all applicable codes and ordinances have been complied with.

(b) *Record of certificates of occupancy.*

(1) The building official shall maintain a record of all certificates of occupancy.

(2) Upon request and payment of the fee, a person may obtain copies of the certificate of occupancy issued for a building or land.

SEC. 51-1.105. FEES.

(a) *Fees for zoning amendments.*

(1) An application will not be processed until the fee has been paid.

(2) The applicant shall pay the filing fee to the director. The director shall deliver fees received to the controller on the next business day following receipt of the fees.

(3) The refund of all or part of an application fee is controlled by Section 51-4.701(f).

* * *

SEC. 51-3.102. BOARD OF ADJUSTMENT.

(a) *Creation; Membership; Appointment.* There is hereby created the board of adjustment which shall consist of five members who are residents of the city. Members are appointed by the city council for two-year terms ending on September 1 of odd-numbered years and shall serve until their successors are appointed and qualified. A vacancy for the unexpired term of any member will be filled in the same manner as the original appointment was made. The city council may appoint four alternate members to the board who serve in the absence of one or more regular members when requested to do so by the chairman or by the city manager. The alternate members serve for the same period and are subject to removal the same as regular members. The city council shall fill vacancies occuring in the alternate membership the same as in the regular membership.

(b) *Quorum and Voting.* Cases must be heard by a minimum number of five members of the board. The concurring vote of four members is necessary to decide any matter. Each member who is present and entitled to vote shall vote in accordance with Chapter 8 of this Code.

(c) *Powers and Duties.* The board has the following powers and duties which must be exercised in accordance with this chapter:

(1) to hear and decide appeals from decisions of the building official made in the enforcement of this chapter;

(2) to interpret the intent of the zoning district map when uncertainty exists because the actual physical features differ from those indicated on the zoning district map and when the rules set forth in the zoning district boundary regulations do not apply;

(3) to hear and decide special exceptions that are expressly provided for in this chapter;

(4) to bring about the discontinuance of a nonconforming use under a plan whereby the full value of the structure can be amortized within a definite time period;

(5) to hear and decide requests for change of occupancy of a nonconforming use to another nonconforming use;

(6) to hear and decide requests for the enlargement of a nonconforming use;

(7) to hear and decide requests for reconstruction of a nonconforming structure on the land occupied by the structure when the reconstruction will not permanently

prevent the return of the property to a conforming use and will not increase the nonconformity;

(8) to require the vacation and demolition of a nonconforming structure that is determined to be obsolete, dangerous, dilapidated, or substandard;

(9) to consider on its own motion or upon the request of interested property owners, the operation or alteration of any use which is a nonconforming use because of its noncompliance with the environmental performance standards set forth in this chapter, and to specify the conditions and standards which must be complied with for continuance of the nonconforming use;

(10) to grant variances from the front yard, side yard, rear yard, lot width, lot depth, coverage, floor area ratios, height, minimum sidewalks, off-street parking or off-street loading, or visibility obstruction regulations that will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done. The variance must be necessary to permit development of a specific parcel of land which differs from other parcels of land by being of such a restrictive area, shape, or slope that it cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same zoning classification. A variance may not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor may a variance be granted to permit any person a privilege in developing a parcel of land not

permitted by this chapter to other parcels of land in districts with the same zoning classification.

(d) *Meetings, Records and Rules.*

(1) All meetings and hearings of the board must be open to the public in accordance with the Texas Open Meetings Act, Article 6252-17, Vernon's Texas Civil Statutes.

(2) All records of the board are public records open to inspection at reasonable times and upon reasonable notice in accordance with the Texas Open Records Act, Article 6252-17a, Vernon's Texas Civil Statutes.

(3) The board shall adopt rules not inconsistent with this code or state law to govern its proceedings.

(e) *Effect of Decisions.*

The board's decision is final unless appealed to the district court within 10 days in accordance with Article 1011g, Vernon's Texas Civil Statutes.

* * *

SEC. 51-3.104. DEPARTMENT OF PLANNING AND DEVELOPMENT.

(a) *Creation; Membership; Appointment.* There is hereby created the department of planning and development consisting of the director of planning and development and such assistants and employees as the city council may provide for upon the recommendation of the city manager. The director shall be appointed by the city manager.

(b) *Powers and Duties.* The director shall perform the following duties and have the following powers:

(1) advise the city manager on matters affecting the urban design and physical development of the city;

(2) develop and recommend to the city manager a comprehensive plan for the city;

(3) review and make recommendations regarding proposed actions implementing the comprehensive plan;

(4) participate in the preparation and revision of the capital improvement program;

(5) administer the regulations governing the subdivision and platting of land in accordance with state and local laws;

(6) coordinate all planning relating to urban redevelopment, urban rehabilitation, and conservation intended to alleviate or prevent slums, obsolescence, blight, or other conditions of urban deterioration;

(7) give advice and provide staff assistance to the board of adjustment and the plan and zoning commission in the exercise of their responsibilities;

(8) perform all other duties required of him by the city manager or by ordinance. (Ord. Nos. 17226; 17393)

SEC. 51-3.105. BUILDING OFFICIAL.

(a) *Powers and Duties.*

(1) The building official shall issue permits in accordance with this chapter.

(2) The building official shall issue certificates of occupancy in accordance with this chapter.

(3) The building official has the authority to enforce the provisions of this chapter.

* * *

SEC. 51-7.705. DETERMINATION OF NONCOMMERCIAL MESSAGES.

(a) *Findings.* The city council finds that it may be necessary in the enforement of this article to determine whether the message displayed upon a sign is a commercial message or a noncommercial message.

(b) *Hearing.* If a person receives a notice of violations or is cited for maintaining an illegal sign, and the person notifies the city attorney in writing within 10 days of receiving the notice or citation that he believes the sign displays a noncommercial message and is, therefore, not in violation of this article, the city attorney shall postpone prosecution of the case and shall have the matter placed on the agenda of the sign control board of adjustment for appeal under Section 51-7.703(e) of this article. The board shall give the person maintaining the sign 10 days written notice of a public hearing on the matter. After hearing the evidence, the board shall decide whether the message displayed on the sign is commercial or noncommercial. No fee may be charged for this appeal.

(c) *Judicial Review.* If the board decides that the message is commercial and that the sign is illegal, the person maintaining the sign may within 10 days of the board's decision file a notice of nonacceptance of the decision with the city attorney. Within three days after receiving

notice of nonacceptance, the city attorney shall initiate suit in the district court for determination that the sign is commercial and for an injunction to prohibit display of the sign in violation of this article. The city shall bear the burden of showing that the sign is commercial. In computing the three-day time period, Saturdays, Sundays, and legal holidays are excluded.

(d) When the tenure of the sign control board of adjustment expires, hearings under Subsection (b) will be before the board of adjustment. (Ord. 18202)

CHAPTER 6A

AMUSEMENT CENTERS

Sec. 6A-1. Definitions.
Sec. 6A-2. License required.
Sec. 6A-3. Reserved.
Sec. 6A-4. License application.
Sec. 6A-5. Fee.
Sec. 6A-6. License display, replacement, and transferability.
Sec. 6A-7. Refusal to issue or renew license.
Sec. 6A-8. License revocation.
Sec. 6A-9. Appeal from refusal to issue or renew license; from decision to revoke license.
Sec. 6A-10. Hours of operation.
Sec. 6A-11. Responsibility of licensee.

SEC. 6A-1. DEFINITIONS.

In this chapter:

(1) AMUSEMENT CENTER means a business establishment in which at least 25 percent of the public floor area is devoted to coin-operated amusement devices and their public use. If a billiard hall, as defined in Chapter 9A of this code, occupies a portion of a business establishment, the billiard hall floor area shall not be included in determining the total public floor area of the establishment.

(2) COIN-OPERATED AMUSEMENT DEVICE means a machine or device operated by insertion of a coin, token or similar object, for the purpose of amusement or skill. This term does not include:

(A) musical devices;

(B) billiard tables;

(C) machines designed exclusively for children; or

(D) devices designed to train persons in athletic skills or golf, tennis, baseball, archery, or other similar sports.

(3) CHIEF OF POLICE means the chief of police of the city of Dallas or his designated agent.

(4) LICENSEE means a person licensed to operate an amusement center.

(5) OPERATOR means a person who manages or controls an amusement center.

(6) PERSON means an individual, assumed name entity, partnership, joint-venture, association, or other legal entity. (Ord. 14736; Ord. 14932)

SEC. 6A-2. LICENSE REQUIRED.

No person may operate an amusement center in the city without first obtaining a license from the chief of police. (Ord. 14736)

SEC. 6A-3. RESERVED.

(Repealed by Ord. 14932)

SEC. 6A-4. LICENSE APPLICATION.

(a) An applicant for a license shall file with the chief of police a written application on a form provided for that purpose, which shall be signed by the applicant, who shall be the owner of the amusement center. Should

an applicant maintain an amusement center at more than one location, a separate application must be filed for each location. The following information is required in the application:

(1) Name, address, and telephone number of the applicant, including the trade name by which applicant does business and the street address of the amusement center, and if incorporated, the name registered with the Secretary of State;

(2) Name, address, and telephone number of the operator of the amusement center and proof that the operator is at least 18 years of age;

(3) Whether the applicant, operator, and, if applicable, any corporate officer of the applicant has been convicted of a felony or within the preceding five years of an offense involving drugs, gambling, prostitution, obscenity, or unlawfully carrying a weapon;

(4) The previous occupation of the applicant, operator, and, if applicable, all corporate officers of the applicant within the preceding five years;

(5) Whether a previous license of applicant, or, if applicable, corporate officer of applicant has been revoked within two years of filing of the application;

(6) Number of coin-operated amusement devices in the center; and

(7) A statement that all the facts contained in the application are true.

(b) The chief of police may require additional information of an applicant or licensee to clarify items on the application.

(c) No applicant may maintain an amusement center in violation of the comprehensive zoning ordinance of the city. (Ord. 14736; Ord. 14932)

SEC. 6A-5. FEE.

The annual fee for an amusement center license is $7.50 for each coin-operated amusement device located in the center. Amusement center licenses expire one year from the date of issuance. The fee for issuing a replacement license for one lost, destroyed, or mutilated is $2. The fee is payable to the department of revenue and taxation upon approval of the license by the chief of police. No refund of license fees will be made. (Ord. 14736)

SEC. 6A-6. LICENSE DISPLAY, REPLACEMENT, AND TRANSFERABILITY.

(A) Each license issued pursuant to this article must be posted and kept in a conspicuous place in the amusement center and must state the number of coin-operated amusement devices for which the license was issued.

(b) A replacement license may be issued for one lost, destroyed, or mutilated, upon application on a form provided by the chief of police. A replacement license shall have the word "REPLACEMENT" stamped across its face and shall bear the same number as the one it replaces.

(c) An amusement center license is not assignable or transferable.

(d) A licensee shall notify the chief of police within 10 days of a change or partial change in the ownership or management of the amusement center, or a change of address or trade name. (Ord. 14736)

SEC. 6A-7. REFUSAL TO ISSUE OR RENEW LICENSE.

The chief of police shall refuse to approve issuance or renewal of an amusement center license for one or more of the following reasons:

(1) A false statement as to a material matter made in an application for a license;

(2) Conviction of the applicant, his operator, or corporate officer of the applicant of a felony or within the preceding five years of an offense involving drugs, gambling, prostitution, obscenity, or unlawfully carrying a weapon; or

(3) Revocation of a license, pursuant to this chapter, of the applicant or corporate officer of the applicant within two years preceding the filing of the application. (Ord. 14736; Ord. 14932)

SEC. 6A-8. LICENSE REVOCATION.

(a) The chief of police shall revoke an amusement center license for one or more of the following reasons:

(1) A false statement as to a material matter made in an application for a license, license renewal or a hearing concerning the license;

(2) Conviction of the licensee, his operator, or corporate officer of the licensee of a felony or an offense involving drugs, gambling, prostitution, obscenity, or unlawfully carrying a weapon.

(3) Conviction twice within a one year period of the licensee or his operator for a violation of the hours of operation provision of this chapter;

(4) Employment by the licensee of an operator who is under 18 years of age;

(5) Operation of an amusement center containing more coin-operated amusement devices than the center is licensed for; or

(6) Violation by the licensee or his operator of Section 6A-11 of this chapter.

(b) The chief of police shall send written notice of revocation to a licensee by certified mail, return receipt requested, setting forth the reasons for the revocation. (Ord. 14736; Ord. 14932)

SEC. 6A-9. APPEAL FROM REFUSAL TO ISSUE OR RENEW LICENSE; FROM DECISION TO REVOKE LICENSE.

If the chief of police refuses to approve the issuance of a license or the renewal of a license to an applicant, or revokes a license issued to a licensee under this article, this action is final unless the applicant or licensee, within 10 days after the receipt of written notice of the action, files with the city manager a written appeal. The city manager shall, within 10 days after the appeal is filed, consider all the evidence in support of or against the

action appealed, and render a decision either sustaining or reversing the action. If the city manager sustains the action, the applicant or licensee may, within 10 days of that decision file a written appeal with the city secretary to the city council setting forth specific grounds for the appeal. The city council shall, within 30 days, grant a hearing to consider the action. The city council has authority to sustain, reverse, or modify the action appealed. The decision of the city council is final. (Ord. 14736)

SEC. 6A-10. HOURS OF OPERATION.

(a) Except as provided in Subsection (b) or (c) of this section, no licensee or his operator may operate the amusement center between the hours of 12:01 a.m. to 9 a.m., Monday through Friday, and between the hours of 2 a.m. to 9 a.m., Saturday and Sunday.

(b) If an amusement center is within 500 feet of a district restricted to residential use under the Comprehensive General Zoning Ordinance of the City of Dallas, no licensee or his operator may operate the amusement center except between the hours of 9 a.m. to 11 p.m., Sunday through Thursday, and between the hours of 9 a.m. to 12 midnight, Friday and Saturday.

(c) If an amusement center is within 500 feet of a public or private elementary or secondary school, no licensee or his operator may operate the amusement center between the hours of 9 a.m. to 4 p.m. during the fall or spring term when students are required to attend school in the school district in which the center is located.

(d) For purposes of this chapter measurements shall be made in a straight line without regard to intervening structures or objects, from the nearest entry door in the portion of the building used as an amusement center to the nearest point of a district restricted to residential use or nearest entry door of a school.

(e) If an amusement center's hours are restricted only by Subsection (a) of this section, a licensee may obtain a temporary permit to operate continuously. The chief of police shall issue a temporary permit for no longer than 30 days and only once a year. (Ord. 14736; Ord. 14932; Ord. 16586)

SEC. 6A-11. RESPONSIBILITY OF LICENSEE.

(a) A licensee or his operator may not permit any of the following activities within the amusement center:

(1) violation of any possession, sale, or delivery provision in Subchapter 4 of the Texas Controlled Substances Act;

(2) violation of any provision in Article 666-17 (14) of the Texas Liquor Control Act;

(3) prostitution;

(4) gambling; or

(5) entry of a person younger than 17 years between the hours of 9 a.m. to 3 p.m. during the fall or spring term when students are required to attend school in the school district in which the center is located.

(b) A licensee or his operator may not permit any of the following activities on premises of the amusement center:

(1) violation of Section 42.01 of the Penal Code; or

(2) violation of Chapter 7A of the Dallas City Code.

(c) In Subsection (b) of this section, "premises" means an area, other than the interior of an amusement center, to which the public or a substantial group of the public has access and which is under the control of an owner or operator of an amusement center, such as a parking facility or private sidewalk. (Ord. 14736; Ord. 14932)

CHAPTER 14

DANCE HALLS

Sec. 14-1. Definitions.
Sec. 14-2. License required.
Sec. 14-3. Issuance of license; posting.
Sec. 14-4. Fees.
Sec. 14-5. Hours of operation.
Sec. 14-6. Inspection.
Sec. 14-7. Dance hall supervisor.
Sec. 14-8. Persons under 17 prohibited.
Sec. 14-9. Expiration of license.
Sec. 14-10. Suspension.
Sec. 14-11. Revocation.
Sec. 14-12 Appeal.
Sec. 14-13 Transfer of license.

SEC. 14-1 DEFINITIONS.

In this chapter:

(1) DANCE HALL means a place where dancing is permitted.

(2) CLASS A DANCE HALL means any place where dancing is permitted three days or more a week.

(3) CLASS B DANCE HALL means any place where dancing is permitted less than three days a week.

(4) CLASS C DANCE HALL means any place where dancing is scheduled one day at a time.

(5) CLASS D DANCE HALL means any place where instruction in dancing is given for consideration.

(6) LICENSE means a permit to operate a dance hall.

(7) LICENSEE means a person in whose name a license to operate a dance hall has been issued, as well as the individual listed as an applicant on the application for a dance hall license.

(8) PERSON means an individual, partnership, corporation, association, or other legal entity.

(9) PRIVATE CLUB means an association of persons for the promotion of some common object, which operates not for a profit a place for the accommodation of its members and guests only. (Ord. 15721)

SEC. 14-2. LICENSE REQUIRED.

(a) A person commits an offense if he operates a dance hall without a license.

(b) An application for a license must be made on a form provided by the chief of police. The applicant must be qualified according to the provisions of this chapter and his premises must be inspected and found to be in compliance with the law by the health department, fire department, and building official.

(c) A person who wishes to operate a dance hall must sign the application for a license as applicant. If a person who wishes to operate a dance hall is other than an individual, each individual who has a 20 percent or greater interest in the business must sign the application for a license as an applicant. A person who wishes to operate a Class D dance hall must give the name and address of each person who is an instructor. Each applicant must meet the requirements of Section 14-3(a) and

each applicant shall be considered a licensee if a license is granted.

(d) It is a defense to prosecution under this section that the actor is conducting a dance at:

(1) a private residence from which the general public is excluded;

(2) a place owned by the federal, state, or local government;

(3) a public or private elementary school, secondary school, college or university;

(4) a place owned by a religious organization; or

(5) a private club.

(e) A person who possesses a valid dance hall license shall not be required to obtain a license as a theater in accordance with the provisions of Chapter 46 of this Code if live performances are presented to the public for an admission fee, cover charge, or other consideration and the operation of the dance hall is in compliance with the provisions of this chapter. (Ord. 15721)

SEC. 14-3. ISSUANCE OF LICENSE; POSTING.

(a) The chief of police shall issue a license to an applicant within 30 days after receipt of an application unless he finds one or more of the following to be true:

(1) An applicant is under 18 years of age.

(2) An applicant or an applicant's spouse is not of good moral character, and his reputation for being peaceable and law-abiding in the community where he resides or does business is bad.

(3) An applicant or an applicant's spouse is overdue in his payment to the city of taxes, fees, fines, or penalities assessed against him or imposed upon him.

(4) An applicant uses alcoholic beverages to excess.

(5) An applicant is physically or mentally incapacitated to an extent that he cannot operate a dance hall.

(6) An applicant has failed to answer or falsely answered a question or request for information on the application form provided.

(7) An applicant or an applicant's spouse has been convicted of a violation of a provision of this chapter, other than the offense of operating a dance hall without a license, within two years immediately preceding the application. The fact that a conviction is being appealed shall have no effect.

(8) An applicant is residing with a person who has been denied a license by the city to operate a dance hall within the preceding 12 months, or residing with a person whose license to operate a dance hall has been revoked within the preceding 12 months.

(9) An applicant's premises have not been approved by the health department, fire department, and the building official.

(10) The license fee required by this chapter has not been paid.

(11) An applicant or an applicant's spouse has been convicted of:

(A) a felony; or

(B) a misdemeanor involving an offense of:

(i) prostitution,

(ii) promotion of prostitution,

(iii) public lewdness,

(iv) gambling,

(v) violation of the Texas Controlled Substances and Dangerous Drugs Act, or

(vi) unlawfully carrying a weapon;

and five years have not elapsed since the termination of any sentence, parole, or probation. The fact that a conviction is being appealed shall have no effect.

(12) An applicant has been employed in a dance hall in a managerial capacity within the preceding 12 months and has demonstrated that he is unable to operate or manage a dance hall premises in a peaceful and law abiding manner.

(b) The license shall state on its face the name of the person to whom it is granted, the expiration date, the address of the dance hall, and whether it is issued for a Class A, Class B, Class C, or Class D dance hall.

(c) The license shall be posted in a conspicuous place at or near the entrance to the dance hall so that it may be easily read at any time. (Ord. 15721; Ord. 16067)

SEC. 14-4. FEES.

The following non-refundable fees shall be charged for each license issued under the terms of this chapter:

(a) For a Class A dance hall, the annual license fee is $250.00;

(b) For a Class B dance hall, the annual license fee is $125.00;

(c) For a Class C dance hall, the daily license fee is $10.00;

(d) For a Class D dance hall, the annual license fee is $25.00. (Ord. 15721)

SEC. 14-5. HOURS OF OPERATION.

(a) A person commits an offense if he operates a Class A, Class B, or Class C dance hall between the hours of 2:00 a.m. and 7:00 a.m., Monday through Saturday, or between 2:00 a.m. and 12:00 noon on Sunday.

(b) A person commits an offense if he operates a Class D dance hall between the hours of 12 midnight and 7:00 a.m. (Ord. 15721)

SEC. 14-6. INSPECTION.

(a) Representatives of the police department, health department, fire department, and housing and urban

rehabilitation department may inspect the premises of a dance hall for the purpose of insuring compliance with the law, at any time it is open for business or occupied.

(b) A person who operates a dance hall or person designated as the dance hall supervisor commits an offense if he refuses to permit a lawful inspection of the premises of a dance hall by a representative of the police department at any time it is open for business or occupied. (Ord. 15721)

SEC. 14-7. DANCE HALL SUPERVISOR.

(a) A person who operates a dance hall must designate a person as dance hall supervisor and register his name with the chief of police.

(b) A person designated dance hall supervisor must remain on the premises of the dance hall during the time dancing is permitted and until 30 minutes after the end of the dance to insure that the dance is conducted in an orderly manner. (Ord. 15721)

SEC. 14-8. PERSONS UNDER 17 PROHIBITED.

(a) No person under the age of 17 years may enter a Class A, Class B or Class C dance hall unless accompanied by a parent or guardian.

(b) A person commits an offense if he falsely represents himself to be either a parent or guardian of a person under the age of 17 years for the purpose of gaining the person's admittance into a dance hall.

(c) A licensee or employee of a Class A, Class B, or Class C dance hall commits an offense if he knowingly allows a person under the age of 17 years to enter or remain on the premises of the dance hall unless he is accompanied by his parent or guardian. (Ord. 15721)

SEC. 14-9. EXPIRATION OF LICENSE.

(a) A license for a Class A, Class B, or Class D dance hall shall expire one year from the date of issuance and may be renewed only by making application as provided in Section 14-2. Application for renewal should be made at least 30 days before the expiration date, and when made less than thirty days before the expiration date the expiration of the license will not be affected.

(b) A license for a Class C dance hall shall expire at 2:00 a.m. on the day following the date of the dance.

(c) When the chief of police denies renewal of a license, the applicant shall not be issued a license for one year from the date denial becomes final. If, subsequent to denial, the chief of police finds that the basis for denial of the renewal license has been corrected or abated, the applicant may be granted a license if at least 90 days have elapsed since the date denial became final. (Ord. 15721)

SEC. 14-10. SUSPENSION.

The chief of police shall suspend a dance hall license for a period of time not exceeding 30 days if he determines that a licensee or an employee of a licensee has:

(1) violated Sections 14-3(c), 14-5, 14-8, or 14-13 of this chapter;

(2) engaged in excessive use or alcoholic beverages while on the dance hall premises;

(3) refused to allow an inspection of the dance hall premises as authorized in this chapter;

(4) knowingly permitted an intoxicated person to remain on the premises;

(5) knowingly permitted gambling by any person on the dance hall premises; or

(6) demonstrated inability to operate or manage a dance hall premises in a peaceful and law abiding manner, thus necessitating action by law enforcement officers. (Ord. 15721)

SEC. 14-11. REVOCATION.

(A) The chief of police shall revoke a license if a cause of suspension in Section 14-10 occurs and the license has been suspended within the preceding 12 months.

(b) The chief of police shall revoke a license if he determines that:

(1) a licensee has given false or misleading information in the material submitted to the chief of police during the application process;

(2) a licensee or an employee is unable to lawfully operate the dance hall because of physical or mental impairment;

(3) a licensee or an employee has knowingly allowed possession, use, or sale of controlled substances on the premises;

(4) a licensee or an employee has knowingly allowed prostitution on the premises; or

(5) a licensee or an employee knowingly permitted a customer to dance during a period of time when the dance hall license was suspended.

(6) A licensee has been convicted of:

(A) a felony; or

(B) a misdemeanor involving an offense of:

(i) prostitution,

(ii) promotion of prostitution,

(iii) public lewdness,

(iv) gambling,

(v) violation of the Texas Controlled Substances and Dangerous Drugs Act, or

(vi) unlawfully carrying a weapon;

and five years have not elapsed since the termination of any sentence, parole, or probation. The fact that a conviction is being appealed shall have no effect.

(c) when the chief of police revokes a license, the revocation shall continue for one year and the licensee shall not be issued a dance hall license for one year from the date revocation became final. If, subsequent to revocation, the chief of police finds that the basis for the

revocation action has been corrected or abated, the applicant may be granted a license if at least 90 days have elapsed since the date the revocation became final. If the license was revoked under Subsection 6, and applicant may not be granted another license. (Ord. Nos. 15721; 16067)

SEC. 14-12. APPEAL.

If the chief of police denies the issuance of a license, or suspends or revokes a license, he shall send to the applicant, or licensee, by certified mail, return receipt requested, written notice of his action and the right to an appeal. The aggrieved party may appeal the decision of the chief of police to a permit and license appeal board in accordance with Section 2-96 of this code. The filing of an appeal stays the action of the chief of police in suspending or revoking a license until the permit and license appeal board makes a final decision. (Ord. Nos. 15721; 16067; 18200)

SEC. 14-13. TRANSFER OF LICENSE.

A licensee shall not transfer his license to another, nor shall a licensee operate a dance hall under the authority of a license at any place other than the address designated in the application. (Ord. 15721)

CHAPTER 46

THEATERS

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ARTICLE I - IN GENERAL

SEC. 46-1. DEFINITIONS.

In this chapter:

(1) A PUBLIC HOUSE OF AMUSEMENT means a structure that is used as a theater, moving picture theater, moving picture show, or orchestral concert hall.

(2) THEATER means a structure, including but not limited to a hotel, restaurant, tavern, and other comparable establishment, in which dance, drama, opera, musical, or other similar live performances are presented to the public for an admission fee, cover charge, or other consideration.

(3) MOVING PICTURE SHOW means a structure in which moving picture films are exhibited to the public for an admission fee, cover charge, or other consideration.

(4) MOVING PICTURE THEATER means a structure which is used as a theater and moving picture show.

(5) ORCHESTRAL CONCERT HALL means a structure in which vocal or instrumental musical concerts are presented to the public for an admission fee, cover charge or other consideration.

(6) LICENSE means a permit to operate a public house of amusement.

(7) LICENSEE means the person in whose name a license to operate a public house of amusement has been issued, as well as the individual(s) listed as applicant(s) on the application for a public house of amusement.

(8) PERSON means an individual, partnership, company, corporation, association, firm, organization, institution, or similar entity. (Ord. 16210)

46-2. CLASSIFICATION.

Public houses of amusement are hereby classified as follows:

(1) Theaters.

(2) Moving picture theaters.

(3) Moving picture shows.

(4) Orchestral concert halls. (Ord. 16210)

SEC. 46-3. LICENSE REQUIRED.

(a) A person commits an offense if he operates a public house of amusement without a valid license, issued by the city for the particular class of house operated.

(b) An application for a license must be made on a form provided by the chief of police. The applicant must be qualified according to the provisions of this chapter and the premises must be inspected and found to be in compliance with the law by the health department, fire department, and building official.

(c) If a person who wishes to operate a public house of amusement is an individual, he must sign the application for a license as applicant. If a person who wishes to operate a public house of amusement is other than an individual, each individual who has a 20 percent or greater interest in the business must sign the application

for a license as applicant. Each applicant must meet the requirements of Section 46-4, and each applicant shall be considered a licensee if a license is granted.

(d) It is a defense to prosecution under this section that a theater, moving picture theater, moving picture show, or orchestral concert hall is operated by a:

(1) church, temple, synagogue, or other nonprofit religious organization;

(2) governmental entity;

(3) nonprofit civic or social organization;

(4) proprietary school which is licensed by the state;

(5) public or private elementary or secondary school;

(6) college, junior college, or university which is supported entirely or partially by taxes; or

(7) private college or university that maintains and operates educational programs from which credits are transferable to a college, junior college, or university that is supported entirely or partially by taxes.

(e) A person who possesses a valid dance hall license is not required to obtain a public house of amusement license for a theater if live performances are presented to the public for an admission fee, cover charge, or other consideration and the operation of the dance hall is otherwise in compliance with the provisions of Chapter 14 of this code.

(f) The securing of a license entitles the holder of the license to operate the classification of public house of amusement for which license was issued, and also, without additional license, to operate a public house of amusement for which a lower license fee is charged, but not a public house of amusement for which a higher fee is charged. (Ord. 16210)

SEC. 46-4. ISSUANCE OF LICENSE.

(a) The Chief of Police shall approve the issuance of a license by the Assessor and Collector of Taxes to an applicant within 30 days after receipt of an application unless he finds one or more of the following to be true:

(1) An applicant is under 18 years of age;

(2) An applicant or applicant's spouse is not of good moral character and his reputation for being peaceable and law-abiding in the community where he resides or does business is bad;

(3) An applicant or an applicant's spouse is overdue in his payment to the city of taxes, fees, fines, or penalties assessed against him or imposed upon him;

(4) An applicant uses alcoholic beverages to excess;

(5) An applicant is physically or mentally incapacitated to an extent he cannot properly operate a public house of amusement;

(6) An applicant has failed to answer or has falsely answered a question or request for information on the application form provided;

(7) An applicant or an applicant's spouse has been convicted of a violation of a provision of this chapter, other than the offense of operating a public house of amusement without a license, within two years immediately preceding the application. The fact that a conviction is being appealed shall have no effect.

(8) An applicant is residing with a person who has been denied a license by the city to operate a public house of amusement within the preceding 12 months, or residing with a person whose license to operate a public house of amusement has been revoked within the preceding 12 months.

(9) An applicant's premises have not been approved by the health department, fire department, and the building official.

(10) The license fee required by this chapter has not been paid.

(11) An applicant or an applicant's spouse has been convicted of:

(A) a felony; or

(B) a misdemeanor involving an offense of:

(i) prostitution,

(ii) promotion of prostitution,

(iii) public lewdness,

(iv) gambling,

(v) violation of the Texas Controlled Substances and Dangerous Drugs Act, or

(vi) unlawfully carrying a weapon;

and five years have not elapsed since the termination of any sentence, parole, or probation. The fact that a conviction is being appealed shall have no effect.

(12) An applicant has been employed in a public house of amusement in a managerial capacity within the preceding 12 months and has demonstrated that he is unable to operate or manage a public house of amusement premises in a peaceful and law-abiding manner.

(b) The license, if granted, shall state on its face the name of the person to whom it is granted, the expiration date, and the address of the public house of amusement. The license shall be posted in a conspicuous place at or near the entrance of the public house of amusement so that it may be easily read at any time. (Ord. 16210)

SEC. 46-5. FEES.

The following non-refundable fees shall be charged for each classification of public house of amusement license issued under the terms of this chapter:

(a) For a theater, the annual license fee is $150;

(b) For a moving picture theater, the annual license fee is $75;

(c) For a moving picture show, the annual license fee is $65;

(d) For an orchestral concert hall, the annual license fee is $25. (Ord. 16210)

SEC. 46-6. HOURS OF OPERATION.

A person commits an offense if he operates a public house of amusement between the hours and 2:00 a.m. and 7:00 a.m.; Monday through Saturday, or between the hours of 2:00 a.m. and 12 noon Sunday. (Ord. 16210)

SEC. 46-7. INSPECTION.

(a) Representatives of the police department, health department, fire department, tax department, and housing and urban rehabilitation department may inspect the premises of a public house of amusement for the purpose of insuring compliance with the law, at any time it is open for business or occupied.

(b) A person who operates a public house of amusement or his agent or employee commits an offense if he refuses to permit a lawful inspection of the premises of a public house of amusement by a representative of the police department at any time it is open for business or occupied. (Ord. 16210)

SEC. 46-8. EXPIRATION OF LICENSE.

(a) Each license shall expire one year from the date of issuance and may be renewed only by making application as provided in Section 46-3. Application for renewal should be made at least 30 days before the expiration date, and when made less than 30 days before the expiration date, the expiration of the license will not be affected.

(b) When the chief of police denies renewal of a license, the applicant shall not be issued a license for one year from the date of denial. If, subsequent to denial, the chief of police finds that the basis for denial of the renewal license has been corrected or abated, the applicant may be granted a license if at least 90 days have elapsed since the date denial became final. (Ord. 16210)

SEC. 46-9. SUSPENSION.

The chief of police shall suspend a license for a period not to exceed 30 days if he determines that a licensee or an employee of a licensee has:

(1) violated Section 46-6, Section 46-7, Section 46-12.1, Section 46-12.2, or Section 46-12.3 of this chapter;

(2) engaged in excessive use of alcoholic beverages while on the public house of amusement premises;

(3) refused to allow an inspection of the public house of amusement premises as authorized by this chapter;

(4) knowingly permitted gambling by any person on the public house of amusement premises;

(5) demonstrated inability to operate or manage a public house of amusement premises in a peaceful and law-abiding manner thus necessitating action by law enforcement officers. (Ord. 16210)

SEC. 46-10. REVOCATION.

(a) The chief of police shall revoke a license if a cause of suspension in Section 46-9 occurs and the license has been suspended within the preceding 12 months.

(b) The chief of police shall revoke a license if he determines that:

(1) a licensee has given false or misleading information in the material submitted to the chief of police during the application process;

(2) a licensee or an employee is unable to lawfully operate the public house of amusement because of physical or mental impairment;

(3) a licensee or an employee has knowingly allowed possession, use, or sale of controlled substances on the premises;

(4) a licensee or an employee has knowingly allowed prostitution on the premises; or

(5) a licensee or employee knowingly operates a public house of amusement during a period of time when the licensee's license was suspended; or

(6) a licensee has been convicted of:

(A) a felony; or

(B) a misdemeanor involving an offense of:

(i) prostitution,

(ii) promotion of prostitution,

(iii) public lewdness;

(iv) gambling,

(v) violation of the Texas Controlled Substances and Dangerous Drugs act, or

(vi) unlawfully carrying a weapon;

and five years have not elapsed since the termination of any sentence, parole, or probation. The fact that a conviction is being appealed shall have no effect.

(c) When the chief of police revokes a license, the revocation shall continue for one year and the licensee shall not be issued a public house of amusement license for one year from the date revocation became final. If, subsequent to revocation, the chief of police finds that the basis for the revocation actions has been corrected or abated, the applicant may be granted a license if at least 90 days have elapsed since the date the revocation became final. If the license was revoked under Subsection 6, an applicant may not be granted another license. (Ord. 16210)

SECTION 46-11. APPEAL.

(a) If the chief of police denies the issuance of a license, or suspends or revokes a license, he shall send to the applicant, or licensee, by certified mail, return receipt requested, written notice of his action and the right to an appeal. The aggrieved party may appeal the decision of the chief of police to the city manager within 10 days after receipt of the notice from the chief of police. The action of the chief of police is final unless a timely appeal is made. The filing of an appeal stays the action of the chief of police in suspending or revoking a license until the city manager, or his designee, makes a final decision.

(b) The city manager, or his designated representative, shall serve as hearing officer and consider evidence

offered by any interested person. The formal rules of evidence do not apply to an appeal hearing under this section; the hearing officer shall make his decision on the basis of a preponderance of the evidence presented at the hearing. The hearing officer must render a final decision within 30 days after the request for a hearing is filed. The hearing officer shall affirm, reverse, or modify the action of the chief of police. The decision of the hearing officer is final unless the applicant or licensee files a written request with the city secretary for a hearing before the license appeal board within 10 days after receipt of notice of the action of the hearing officer.

(c) If a written request for an appeal hearing is filed with the city secretary within the 10 day limit, the city council shall appoint three city council members to serve as a license appeal board and shall set a date for the hearing. The license appeal board shall hear and consider evidence offered by any interested person. The formal rules of evidence do not apply. The license appeal board shall decide the appeal on the basis of a preponderance of the evidence presented at the hearing if there is a dispute as to fact, otherwise the board shall decide the appeal in accordance with the express provisions of this chapter. The board shall affirm, reverse, or modify the action of the hearing officer by a majority vote. Failure to reach a majority decision on a motion shall leave the hearing officer's decision unchanged. The decision of the license appeal board is final. (Ord. 16210)

SEC. 46-12. RESERVED.

(Repealed by Ord. 16210)

SEC. 46-12.1. TRANSFER OF LICENSE.

A licensee shall not transfer his license to another, nor shall a licensee operate a public house of amusement under the authority of a license at any place other than the address designated in the application. (Ord. 16210)

SEC. 46-12.2. SPIELING PROHIBITED.

A person commits an offense if he stands in front of, or is on any public street in front of, any public house of amusement, and by spieling or loud talking, seeks to induce passersby to enter or patronize the public house of amusement. (Ord. 16210)

SEC. 46-12.3 PROHIBITING EXHIBITION OF CERTAIN SEXUALLY EXPLICIT FILMS IN SPECIFIED AREAS.

(a) A person commits an offense if he operates or causes to be operated within 1000 feet of a church, public or private elementary or secondary school, district restricted to residential use by the Comprehensive Zoning Ordinance of the city, or public park adjacent to a district restricted to residential use a moving picture show or moving picture theater which exhibits a film that explicitly depicts:

(1) contact between any part of the genitals of one person and the genitals, mouth, or anus of another person;

(2) contact between a person's mouth, anus, or genitals and the mouth, anus, or genitals of an animal or fowl;

(3) manipulation of a person's genitals;

(4) defecation; or

(5) urination.

(b) It is a defense to prosecution under Subsection (a) that the moving picture theater or moving picture show was being operated lawfully as a moving picture theater or moving picture show at the same location and upon the same premises upon the effective date of this subsection and has continuously operated at that location as a moving picture theater or moving picture show. (Ord. Nos. 16210, 16270)

SEC. 46-12.4. MEASUREMENT OF DISTANCES.

For the purposes of this article, measurement shall be made in straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as a part of the premises where a theater or show is conducted to the nearest property line of the premises of a church or public or private elementary or secondary school, or to the nearest boundary of a district restricted to residential use. (Ord. 16210)

ARTICLE II.
MOTION PICTURE CLASSIFICATION

SEC. 46-13. DEFINITIONS.

(a) In this article:

(1) ADVERTISEMENT means material which is designed to attract the attention of the public to a film and is displayed by use of a newspaper.

(2) BOARD means the Dallas Motion Picture Classification Board.

(3) FILE means to deliver to the director of consumer services.

(4) FILM means a motion picture, but does not include a motion picture which depicts current events or news.

(5) INITIAL EXHIBITION means the first public showing of a film in the city.

(6) INTERESTED PARTY means a film distributor or exhibitor who has a monetary interest in a film.

(7) NOT SUITABLE FOR YOUNG PERSONS means a film:

(A) which depicts sexual conduct, nudity, defecation, or urination in a manner which is patently offensive to the average person applying contemporary community standards with respect to what is suitable for viewing by young persons; and which, taken as a whole:

(i) appeals to the prurient interest of young persons; and

(ii) lacks serious literary, artistic, political, or scientific value for young persons; or

(B) which explicitly depicts the infliction of serious bodily injury by a person upon another person or animal, or which explicitly depicts a person inflicting

serious damage to or destroying property, and the infliction of injury, damage, or destruction is:

(i) an intentional act;

(ii) depicted without the express portrayal of significant adverse legal, physical, emotional, or societal consequences to the person who inflicts the injury, damage, or destruction; and

(iii) contrary to contemporary community legal, ethical, or moral standards; or

(C) which explicitly depicts serious bodily injury to a person, and the depiction of the injury is patently offensive to the average person applying contemporary community standards with respect to what is suitable for viewing by young persons.

(8) NUDITY means a human bare buttock, anus, male genitals, female genitals, or female breast.

(9) OBSCENE LANGUAGE means spoken words which are lewd, lascivious, or filthy.

(10) PROPERTY means:

(A) real property; or

(B) tangible personal property, including anything severed from land.

(11) PRURIENT INTEREST means a shameful or morbid interest in sexual conduct, nudity, defecation, or urination.

(12) RECKLESS means a person's mental state with respect to circumstances surrounding his conduct or

the result of his conduct when he is aware of but consciously disregards a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the person's standpoint.

(13) SERIOUS BODILY INJURY means bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement, or protracted loss or impairment of any bodily member or organ.

(14) SERIOUS DAMAGE means damage to property which results in a substantial pecuniary loss to the owner or a third person.

(15) SEXUAL CONDUCT means:

(A) any contact between any part of the genitals of one person and the genitals, mouth, or anus of another person;

(B) any contact between a person's mouth, anus, or genitals and the mouth, anus, or genitals of animal or fowl; or

(C) any manipulation of a person's genitals.

(16) YOUNG PERSON means a person who is under the age of 16 years.

(b) In computing a period of time prescribed or allowed under this article, the day of an act or event is not included in the computation of the time period. The

last day of the period of time is included in the computation unless that day is a Saturday, Sunday or legal holiday, in which event the next day following which is not a Saturday, Sunday, or legal holiday is included in the computation. (Ord. Nos. 12169; 14862; 14930; 15365; 16133; 17517)

SEC. 46-14. MOTION PICTURE CLASSIFICATION BOARD ESTABLISHED.

(a) There is created a board to be known as the motion picture classification board composed of a chairman, vice-chairman and 24 other members to be appointed by the city council. Members shall serve without pay and their terms of office will be for a period of two years beginning on September 1 of each odd numbered year. The board shall adopt rules and regulations, subject to approval of the city council, to govern its proceedings and deliberations. When a vacancy occurs on the board, the city council shall appoint a new member to fill the vacancy for the unexpired term. Six members shall constitute a quorum and issues shall be decided by a simple majority of those present.

(b) Members of the board must be residents of the city, and shall be chosen as far as practicable in a manner that will represent the entire community. Members should be educated or experienced in one or more of the following fields: art, drama, law, literature, philosophy, sociology, psychology, history, education, music, science, or other fields. At least four members must be qualified to interpret and write the Spanish language, (Ord. Nos. 12169; 12373; 14552; 14730; 14862; 14930; 14952)

SEC. 46-15. CLASSIFICATION PROCEDURE.

(a) Within a reasonable time before initial exhibition, a distributor shall file an application which contains the following information concerning a film:

(1) Proposed classification, either "Suitable for Young Persons" or "Not Suitable for Young Persons".

(2) Title of film and date of initial exhibition.

(3) Summary of plot and names of the primary actors.

(b) If a "Not Suitable for Young Persons" classification is proposed by a distributor, the board shall accept the classification by formal board action or failure to act within seven days after the application is filed. If a "Suitable for Young Persons" classification is proposed by a distributor, the board shall:

(1) accept the classification by:

(A) formal board action; or

(B) failure to act within seven days after an application is filed unless the board directs additional information filed;

(2) direct a distributor to file additional information on a film and when the information is filed, accept the classification by:

(A) formal board action; or

(B) failure to act within seven days after the additional information is filed unless the board orders projection of a film;

(3) order a distributor to project a film before the board and accept the classification by:

(A) formal board action; or

(B) failure to act within two days after viewing a film or failure to meet after a screening is scheduled; or

(4) reject the classification and determine a classification by formal board action within two days after viewing a film.

(c) A distributor shall provide a suitably equipped screening room for the board to view a film at reasonable hours and may present additional information in support of a proposed classification.

(d) If the board files a "Not Suitable for Young Persons" classification order and the proposed classification had been "Suitable for Young Persons", the order shall contain the following information:

(1) Classification.

(2) Basis for classification under this article.

(3) Any other information the board considers useful to a distributor.

(e) If the board files a "Suitable for Young Persons" classification order, the board may attach one or more of the following symbols to indicate exceptions to the order and to advise parents of young persons that a film contains certain material:

(1) 'L' means obscene language or language used to describe sexual conduct, defecation, urination, or genitalia.

(2) "S" means sexual conduct or implicit sexual conduct or defecation or urination.

(3) "V" means infliction of serious bodily injury to a person or animal, or infliction of serious damage to or destruction of property.

(4) "D" means use of harmful drugs or drug abuse.

(5) "N" means nudity.

(6) "P" means a perverse person such as a masochist, sadist, pederast, or other aberrant sexual person.

The attachment of an exception to an order is for public information only and is not subject to judicial review under Section 46-16 of this article.

(f) If the board files a classification order without viewing a film and subsequent investigation reveals a possible erroneous classification, the board may order projection of the film under this section. In the event a film is reclassified, the interested party shall alter his advertising accordingly within two days after the reclassification and comply immediately with the audience provisions of this article. After one year from an original classification order unless the time limit is waived by the board, a distributor may file an application for reclassification in which case the procedures in this section apply.

(g) When the board files a classification order or any other order under this article, the director of consumer affairs shall give notice of the order by mail to the distributor and any other interested party who requests the notice.

(h) No young person may attend a screening of a film while the board is viewing the film for the purpose of classification under this article. (Ord. Nos. 12169; 13271; 13525; 13548; 14730; 14862; 14930; 15365; 15511; 16295; 17517)

SEC. 46-16. JUDICIAL REVIEW.

(a) Within two days after the board files a classification order under Section 46-15(d) of this article, an interested party may file notice of nonacceptance of the classification. Within three days after notice of nonacceptance is filed, the board shall initiate suit in district court for determination that a film is "Not Suitable for Young Persons" and for an injunction to prohibit the exhibition of the film in violation of this article. The board shall bear the burden of showing that the film is "Not Suitable for Young Persons" and shall proceed with all diligence and expedition in the adjudication of the case.

(b) When a notice of nonacceptance is filed by an interested party, this action constitutes nonacceptance by both the distributor and exhibitor. (Ord. Nos. 12169; 14930; 15365)

SEC. 46-17. CERTAIN ACTS DECLARED PUBLIC NUISANCES.

The following acts are declared to be public nuisances under this article:

(1) A violation of Section 46-18(a) of this article.

(2) Violation of Section 46-18(c)(1) or (2) of this article by an exhibitor, if he or his employee is convicted three times within a two-year period.

(3) Exhibition of a film classified "Not Suitable for Young Persons" at which more than three young persons are in attendance. (Ord. Nos. 12169; 14930)

SEC. 46-18. UNLAWFUL ACTS.

(a) An exhibitor or employee of an exhibitor commits an offense, without regard to his mental state, if he:

(1) exhibits a film which has not been classified by the board:

(2) exhibits a film contrary to a classification order;

(3) fails to post conspicuously in a ticket booth of a theater the classification order; or

(4) exhibits in a theater to a young person a filmed advertisement of a film which has not been classified or is classified "Not Suitable for Young Persons."

(b) A young person commits an offense, without regard to his mental state, if he:

(1) represents falsely he is 16 years of age or older for the purpose of viewing a film classified "Not Suitable for Young Persons"

(2) represents falsely that a person is his parent or legal guardian for the purpose of viewing a film classified "Not Suitable for Young Persons", or

(3) views a film classified "Not Suitable for Young Persons" if a sign is posted conspicuously in a ticket booth of a theater indicating a "Not Suitable for Young Persons" classification.

(c) A person commits an offense if he recklessly:

(1) sells or gives to a young person a ticket to a film classified "Not Suitable for Young Persons";

(2) allows a young person to view a film classified "Not Suitable for Young Persons";

(3) makes a false statement for the purpose of enabling a young person to view a film classified "Not Suitable for Young Persons"; or

(4) allows a young person to attend a screening of a film while the board is viewing the film for the purpose of classification under this article.

(d) A film distributor or employee of a distributor commits an offense, without regard to his mental state, if he fails to have a film classified by the board and the film is exhibited to the public.

(e) Upon failure of a distributor to obtain a classification order for a film, an exhibitor of the film may notify in writing the director of consumer affairs of his intent to exhibit and advertize the film as "Not Suitable for Young Persons" until a classification order is obtained. After notification, the exhibitor shall treat the film as if it were "Not Suitable for Young Persons" and comply with the provisions of this article in that regard.

(f) A film distributor or employee of a distributor commits an offense, without regard to his or her mental

state, if he or she prohibits any person who is sixteen years of age or over from attending the screening of a film at the time the board is viewing the film. It is a defense to prosecution under this subsection (f) if a film distributor or an employee of a distributor prohibits a person from attending a screening in order to comply with Chapter 16 of this code. (Ord. Nos. 12169; 14930; 15145; 15365; 16133; 17028)

SEC. 46-19. DEFENSE.

(a) It is a defense to prosecution under Sections 46-17(3), 46-18(a)(4), 46-18(b)(3), 46-18(c)(1) or 46-18(c)(2) of this article that the young person was accompanied by his parent or legal guardian during exhibition of the film.

(b) If is a defense to prosecution under Section 46-18(a)(2), 46-18(a)(3), 46-18(a)(4), 46-18(b)(3), 46-18(c)(1), 46-18(c)(2), and 46-20(a)(2)(A) of this article that a notice of nonacceptance has been filed and no temporary or permanent injunction has been granted pursuant to the provisions of Section 46-16. (Ord. Nos. 12169; 13525; 13548; 14930; 16133; 17517)

SEC. 46-20. ADVERTISEMENT.

(a) A film distributor, exhibitor, or an employee of a film distributor or exhibitor commits an offense, without regard to his mental state, if he:

(1) places or causes to be placed an advertisement for a film which has not been classified by the board;

(2) places or causes to be placed an advertisement which:

(A) fails to display or displays incorrectly the classification order of the board; or

(B) describes as "Suitable" a film classified by the board as "Not Suitable for Young Persons", regardless of whether a notice of nonacceptance has been filed and regardless of whether a temporary or permanent injunction has been granted pursuant to the provisions of Section 46.16; or

(3) places or causes to be placed an advertisement which fails to comply with the following requirements:

(A) Minimum type size of six points for a classification order if the advertisement is at least two columns in width and two inches in height.

(B) Minimum type size of five points for a classification order if the advertisement is less than two columns in width and two inches in height and Section 46-20(a)(3)(C) does not apply.

(C) A point size and style for a classification order which is the same as the show time if the advertisement is three-fourths an inch or less in height.

(D) Type style and face for a classification order which is legible and readable.

(E) Location for a classification order which is near the Motion Picture Association of America rating, if a rating appears.

(b) In an advertisement, the wording of a classification order is:

(1) "Not Suitable", if the order is "Not Suitable for Young Persons";

(2) "Suitable Except (S)(V)(L)(D)(N)(P)", whichever symbol applies if the order is "Suitable for Young Persons" with Exceptions; or

(3) "Suitable", if the order is "Suitable for Young Persons".

(c) It is a defense to prosecution under Subsection (a) of this section that the advertisement appeared only before the day of initial exhibition.

(d) It is a defense to prosecution under Subsection (a)(2) of this section that the actor was unable to correct the advertisement immediately, but the correction was made within a reasonable time after the classification order was issued.

(e) If a theater primarily exhibits Spanish language films or a newspaper primarily publishes in the Spanish language, the display or advertisement of a classification order which is required under this chapter must appear in the Spanish language. (Ord. Nos. 15145; 15365; 17517)